such options or the option plan do not provide for such financing.

(b) Section 207.4(a) of Regulation G permits a corporation or its plan-lender to extend credit to its employees without regard to the normal credit limitations of the regulation for the purpose of exercising stock options or stock purchase rights if the plan or agreement under which the credit is extended complies with certain requirements. Paragraph (1) of §207.4(a) is in effect a ''grandfather clause,'' exempting from most of the credit limitations of Regulation G any such credit extended in connection with options or rights meeting certain specified ''pre-existing'' conditions. Generally, these conditions recognize inequities that would result from application of the regulation's restrictions to credit extended in connection with options or rights granted, or contractual commitments made prior to February 1, 1968, the date the adoption of Regulation G was announced. Paragraph (2) of §207.4(a) provides a more limited exemption for credit extended in connection with options or rights granted after February 1, 1968, and establishes requirements for plans seeking to qualify for this exemption.

(c) Paragraph (iii) of §207.4(a)(1), which was added effective July 8, 1969, was designed to provide exemption, from all but certain reporting provisions, for credit extended pursuant to the exercise of stock options or rights that are qualified or restricted under sections 422 through 424 of the Internal Revenue Code, if the options or rights were granted prior to February 1, 1968. This exemption applies only to those plans that provided for credit. This is because (1) employer-lenders who intended to supply credit when granting such options could not have anticipated the requirements of Regulation G and (2) the position of the Commissioner of Internal Revenue that such plans cannot be modified, would frustrate that intention. If a particular plan did not provide for credit, no expectations would be defeated by the fact that it could not be modified to add such provisions.

(d) The recent amendment to paragraph (2) of §207.4(a), which applies to stock purchase as well as option plans, was to clarify that to be treated as subject to the more limited exemption in that subparagraph, an otherwise appropriate credit arrangement need not be part of the plan. It is the Board's experience that in some nonqualified plans, particularly stock purchase plans, the credit arrangement is distinct from the plan. So long as the credit extended, and particularly, in the present context, the character of the plan-lender, conforms with the requirements of the regulation, the fact that option and credit are provided for in separate documents is immaterial. It should be emphasized that the Board does not express any view on the preferability of qualified as opposed to nonqualified options; its role is merely to prevent excessive credit in this area.

(e) The amendments promulgated on February 10, 1969, made one other change in §207.4(a). This was the addition of the provision that the plan-lender must be wholly owned as well as controlled by the issuer of the collateral (taking as a whole, corporate groups including subsidiaries and affiliates). This insertion was made to clarify the Board's intent that, to qualify for special treatment under that section, the lender must stand in a special employer-employee relationship with the borrower, and a special relationship of issuer with regard to the collateral. The fact that the Board, for convenience and practical reasons, permitted the employing corporation to act through a subsidiary or other entity should not be interpreted to mean the Board intended the lender to be other than an entity whose overriding interests were coextensive with the issuer. An independent corporation, with independent interests was never intended, regardless of form, to be at the base of exempt stock-plan lending.

[34 FR 18242, Nov. 14, 1969]

§ 207.106 "Deep in the money put and call options" as extensions of credit.

For text of the interpretation on this subject, see §220.122 of this subchapter.

[35 FR 3280, Feb. 21, 1970]

§ 207.107 Status after July 8, 1969, of credit extended prior to that date to purchase or carry mutual fund shares.

For the text of interpretation, see § 221.119 of this subchapter.

[35 FR 6959, May 1, 1970]

§ 207.108 Applicability of margin requirements to credit in connection with insurance premium funding programs.

(a) The Board has been asked numerous questions regarding purpose credit in connection with insurance premium funding programs. The inquiries are included in a set of guidelines in the format of questions and answers which follow. A glossary of terms customarily used in connection with insurance premium funding credit activities is included in the guidelines. Under a typical insurance premium funding program, a borrower acquires mutual fund shares for cash, or takes fund shares which he already owns, and then uses the loan value (currently 40 percent as set by the Board) to buy insurance. Usually, a funding company (the issuer) will sell both the fund shares and the insurance through either independent broker/dealers or subsidiaries or affiliates of the issuer. A typical plan may run for 10 or 15 years with annual insurance premiums due. To illustrate, assuming an annual insurance premium of $300, the participant is required to put up mutual fund shares equivalent to 250 percent of the premium or $750 ($750×40 percent loan value equals $300 the amount of the insurance premium which is also the amount of the credit extended).

(b) These guidelines also (1) clarify an earlier 1969 Board interpretation to show that the public offering price of mutual fund shares (which includes the front load, or sales commission) may be used as a measure of their current market value when the shares serve as collateral on a purpose credit throughout the day of the purchase of the fund shares, and (2) relax a 1965 Board position in connection with accepting purpose statements by mail. It is the Board's view that when it is clearly established that a purpose statement supports a purpose credit then such statement executed by the borrower may be accepted by mail, provided it is received and also executed by the lender before the credit is extended.

[39 FR 9425, Mar. 11, 1974]

§ 207.109 Extension of credit in certain stock option and stock purchase plans.

Questions have been raised as to whether certain stock option and stock purchase plans involve extensions of credit subject to Regulation G when the participant is free to cancel his participation at any time prior to full payment, but in the event of cancellation the participant remains liable for damages. It thus appears that the participant has the opportunity to gain and bears the risk of loss from the time the transaction is executed and payment is deferred. In some cases brought to the Board's attention damages are related to the market price of the stock, but in others, there may be no such relationship. In either of these circumstances, it is the Board's view that such plans involve extensions of credit. Accordingly, where the security being purchased is a margin security and the credit is secured, directly or indirectly, by any margin security, the creditor must register and the credit must conform with either the regular margin requirements of § 207.1(c) or the special ''plan-lender'' provisions set forth in § 207.4(a) of the regulation, whichever is applicable. This assumes, of course, that the amount of credit extended is such that the creditor is subject to the registration requirements of § 207.1(a) of the regulation.

[39 FR 43815, Dec. 19, 1974]

§ 207.110 Accepting a purpose statement through the mail without benefit of face-to-face interview.

(a) The Board has been asked whether the acceptance of a purpose statement submitted through the mail by a lender subject to the provisions of Regulation G will meet the good faith requirement of § 207.1(e). Section 207.1(e) states that in connection with any credit secured by collateral which includes any margin security, a lender must obtain a purpose statement executed by the borrower and accepted by the lender in good faith. Such acceptance requires that the lender be alert